

MEMORANDUM TO: David M. Spooner  
Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty  
New-Shipper Review of Solid Urea from the Russian Federation  
for the Period of Review July 1, 2006, through December 31, 2006

### Summary

We have analyzed the case and rebuttal briefs of interested parties in the new-shipper review of the antidumping duty order on solid urea from the Russian Federation for the period of review (POR) July 1, 2006, through December 31, 2006. We recommend that you approve the positions described in this memorandum. Below is the complete list of the issues in this new-shipper review for which we received comments and rebuttal comments from parties:

1. Qualification as a New Shipper
2. Bona-Fide Transaction

### Background

On December 26, 2007, the Department of Commerce (the Department) published its preliminary results of review, Solid Urea From the Russian Federation: Preliminary Results and Extension of Time Limit for Final Results of the Antidumping Duty New-Shipper Review, 72 FR 72988 (December 26, 2007) (Preliminary Results), in the Federal Register. On February 27, 2008, we issued our post-preliminary analysis decision memorandum and margin recalculations concerning the sales-below-cost investigation of EuroChem.

On March 21, 2008, the Ad Hoc Committee of Domestic Nitrogen producers (the petitioner) withdrew its sales-below-cost allegation and requested that the Department terminate the cost investigation. On March 24, 2008, EuroChem submitted a letter arguing that the Department should not terminate the cost investigation. After considering all comments, on March 27, 2008, we terminated the cost investigation. See Memorandum from Minoo Hatten to Laurie Parkhill dated March 27, 2008.

We invited parties to comment on the Preliminary Results, the Post-Preliminary Decision

Memorandum, and our termination of the sales-below-cost investigation. On March 28, 2008, we received a case brief from the petitioner. On April 4, 2008, we received a rebuttal brief from MCC EuroChem (EuroChem).

#### Other Abbreviations

CIT - Court of International Trade

SAA - Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Rep. 103-316, at 870 (SAA), reprinted in 1994 U.S.C.C.A.N. 4040

SG&A - selling, general, and administrative expenses

The Act - The Tariff Act of 1930, as amended

#### Discussion of the Issues

##### 1. *Qualification as a New Shipper*

Comment 1: The petitioner argues that the Department's finding that EuroChem qualifies as a new shipper is erroneous. The petitioner argues that the Department should reverse its preliminary finding and rescind the new-shipper review.

The petitioner asserts that the Department's preliminary finding ignores the statutory purpose of and eligibility for a new-shipper review. The petitioner contends that a party is eligible for a new shipper review only if they, or, in the case of exporters, their supplying producers began shipping subject merchandise after the imposition of an antidumping duty order. Citing Notice of Proposed Rulemaking and Request for Public Comments, 61 FR 7308, 7317-18 (February 27, 1996), the petitioners claim that the Department has stated that new-shipper status cannot be obtained "through mere restructuring of corporate organizations or channels of distribution."

The petitioner argues that EuroChem does not qualify for a new-shipper review because its factories existed and produced urea during the period of investigation (POI). The petitioner contends that the Department did not address the fundamental issue of how an entity can qualify as a new shipper under the statute and the Department's practice when it is affiliated with entities that were part of the non-market-economy entity that produced and exported subject merchandise during the POI. Citing Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, 61 FR 19026, 19036 (April 30, 1996), the petitioner asserts that the Department has held that, unless a producer or exporter qualifies for a separate rate, it is considered part of the NME entity and, therefore, "there can be no exporters or producers who have not been investigated or reviewed" in a non-market-economy proceeding. Because the plants existed at the time of the original investigation, the petitioner contends, EuroChem does not satisfy the statutory requirement for a new-shipper review.

The petitioner argues further that the Department's preliminary determination that EuroChem qualifies for a new-shipper review is inconsistent with its determination in the 2005 sunset review of the order. Citing Final Results of the Expedited Sunset Review of the Antidumping Duty Order on Solid Urea from the Russian Federation, 70 FR 24,538 (May 10, 2005), and accompanying Issues and Decision Memorandum at 2, the petitioners assert that the Department concluded that it had made a finding of dumping with respect to current Russian

producers, including the plants owned by EuroChem, in part because they were producers that existed prior to the order and, thus, had been investigated. The petitioners argue that the Department cannot now determine that the plants did not exist prior to the issuance of the order given its finding in the 2005 sunset review.

The petitioner also argues that the Department improperly employed its successor-in-interest analysis to find that EuroChem qualifies as a new shipper. According to the petitioner, the Department employs its successor-in-interest analysis to determine whether a particular antidumping duty rate (or exclusion from an order) that was previously established for an individually examined producer or exporter should apply to a particular entity after a change in ownership. As a result, the petitioner contends, the successor-in-interest analysis is not applicable to whether EuroChem is eligible for a new-shipper review. The petitioner contends further that the changes in ownership, management, and the modernization of the plants since the POI would likely occur with any company over a span of 20 years and do not reflect changed circumstances under the Department's regulations.

Finally, the petitioner contends that the Department will create a potentially large and unnecessary administrative burden by continuing this new-shipper review. The petitioner asserts that any producer which has changed over time and has been acquired by a new owner will use this precedent to justify eligibility for a new-shipper review. According to the petitioner, every privatized Russian producer of any product covered by a pre-graduation order would potentially seek new-shipper status, as could producers in other former non-market-economy countries and from the People's Republic of China when that country is eventually graduated to market-economy status. The petitioners argue that this would create an enormous and unnecessary burden for the Department given that such producers could obtain individual margins through the administrative-review process.

EuroChem argues that the Department accepted its request for a new-shipper review properly. EuroChem contends that, given the statutory and regulatory requirements, it is entitled to a new-shipper review if three conditions are met: 1) it did not export subject merchandise to the United States during the POI; 2) it has never been affiliated with Soyuzpromexport or Philipp Brothers, the only exporters or producers which exported the subject merchandise during the POI; 3) it is not the successor-in-interest to either of the entities that exported subject merchandise or to an entity that was affiliated with such entities. EuroChem asserts that it meets all three of these conditions.

EuroChem argues that there was no need for the Department to use its successor-in-interest test because there is no evidence that the Soviet entities that operated the plants were affiliated to either of the exporters who exported the subject merchandise during the POI. EuroChem asserts that the fact that all entities in a non-market economy are owned by the state or by the people has not been considered to establish affiliation under the antidumping law. EuroChem claims that its assertion is supported by extensive, established Department precedent. Nevertheless, EuroChem argues, the Department's finding, relying on its successor-in-interest test, that EuroChem is not a successor-in-interest to or an affiliate of Soyuzpromexport or any Soviet entity was proper.

EuroChem contends that the petitioner's argument glosses over the fact that there is a meaningful difference between Soviet entities and open joint-stock companies in the Russian

Federation. EuroChem alleges that the petitioner ignores the fact that the Soviet Union itself no longer exists and that the petitioner's reference to what has happened since the POI as "corporate restructuring" dramatically understates the massive transformation that has occurred in Russia.

Finally, EuroChem asserts that the petitioner's prediction of a large burden on the Department is fiction because, unlike the circumstances in this case, the People's Republic of China will presumably still exist when it is graduated to market-economy status.

Department's Position: Section 751(a)(2)(B) of the Act provides that the Department shall conduct a new-shipper review if it receives a request for such a review from an exporter or producer that did not export subject merchandise during the POI and is not affiliated with any exporter or producer which exported the subject merchandise to the United States during that period.

For the Preliminary Results, we analyzed EuroChem and the urea-producing facilities it owns in order to determine whether EuroChem (including its urea-producing facilities) qualifies for a new-shipper review. We employed our successor-in-interest analysis in reaching the conclusion that EuroChem did qualify for a new-shipper review. See Preliminary Results, 72 FR at 72989.

We disagree with the petitioner's contention that it was improper to employ our successor-in-interest analysis. While there were undeniably urea-producing facilities in Nevinnomyssk and Novomoskovsk during the POI, there were also substantial changes which occurred since the POI in ownership, management, equipment, etc. with respect to those facilities, and the Department must reach a conclusion as to whether the entity requesting this new-shipper review, EuroChem, operates as the same business entity which existed at the time of the less-than-fair-value investigation.

We continue to find, as we found in our Preliminary Results, that the changes which occurred with respect to the urea-producing facilities do not constitute mere "corporate restructuring." Rather, the record evidence indicates that the urea-producing facilities underwent a complete change in ownership and upper management and have undergone extensive modernization since the POI. See Preliminary Results, 72 FR at 72989. Based on this record evidence, we have concluded that EuroChem is not operating as the same business entity as the Soviet entity examined in the less-than-fair-value investigation. Nor does the record evidence support a finding that EuroChem is or was affiliated with that Soviet entity. Accordingly, we continue to find that EuroChem is not the successor-in-interest to the Soviet entity examined in the less-than-fair-value investigation.

Finally, the petitioner's assertion that we will create a potentially large and unnecessary administrative burden by continuing this new-shipper review is speculative and irrelevant to a factual determination in this proceeding. In conclusion, because we find that EuroChem is neither the successor-in-interest to the Soviet entity we examined in the original investigation, nor is it affiliated with that entity, we find that EuroChem qualifies for a new-shipper review under the terms of section 751(a)(2)(B) of the Act.

## 2. *Bona-Fide Transaction*

Comment 2: The petitioner contends that EuroChem's U.S. sale was not a *bona-fide* commercial transaction and that the Department should rescind the new-shipper review.

The petitioner asserts that the price of the U.S. sale was not typical of other export sales. According to the petitioner, the U.S. sales price varies significantly from the average price of urea which EuroChem sold to third countries. The petitioner also asserts that the quantity of the U.S. sale was aberrational compared to EuroChem's other at-sea sales.<sup>1</sup> The petitioner avers that, because EuroChem's U.S. sale had an atypical price and an aberrational quantity, it was not a *bona-fide* transaction.

The petitioner asserts further that there is insufficient record evidence to support a finding that EuroChem's U.S. sale was consistent with its normal business practices. The petitioner contends that EuroChem did not clarify whether EuroChem typically makes at-sea sales to the U.S. market (including non-subject merchandise), whether the circumstances surrounding the subject U.S. sale were typical of its at-sea sales, and whether and how EuroChem determined it was commercially reasonable to ship solid urea to the U.S. market without a known buyer.

The petitioner also asserts that, during the cost verification, EuroChem said that production of solid urea is based on sales orders and that it does not generally produce goods without a sales order. The petitioner contends that this at-sea U.S. sale may be unrepresentative or distortive and that the onus was on EuroChem to demonstrate that it was not.

Finally, the petitioner contends that the record does not demonstrate whether the circumstances of the mixed shipment (of subject and non-subject merchandise) were a typical practice for EuroChem's export shipments or for the Russian fertilizer industry as a whole. The petitioner concludes that the record does not support the Department's finding that the U.S. sale was a *bona-fide* transaction.

EuroChem argues that the Department properly found that its U.S. sale was a *bona-fide* transaction. EuroChem asserts that, to reach its conclusion, the petitioner disregarded certain specific contemporaneous sales by EuroChem in third countries such as Italy that show that the U.S. price is similar to third-country prices and that the petitioner calculated average prices from across the POR while ignoring the fact that prices within the United States rose significantly throughout 2006.

EuroChem also argues that the petitioner did not submit any information regarding typical U.S. sales prices in December 2006 although, according to EuroChem, the petitioner would have this information available. Citing the International Trade Commission's sunset review decision, Solid Urea from Russia and Ukraine, Inv. Nos. 731-TA-340-E & H (Second Review), USITC Pub. 3821 (December 2005), EuroChem claims that U.S. urea prices are higher than urea prices abroad. In addition, EuroChem contends that it provided evidence on the record that prices in the United States for urea are increasing significantly and that the price of its U.S. sale was within the market's price range.

EuroChem argues further that the Department recognized properly that EuroChem had an export sale in Italy that was at a nearly identical price to its U.S. sale as well as other sales at similar prices. According to EuroChem, the petitioner's arguments rely on unrepresentative averages across the entire POR (as opposed to December 2006) which are much less significant than comparisons to specific, contemporaneous sales in the U.S. market. EuroChem contends that these averages are not an accurate means by which to measure the reasonableness of its U.S.

---

<sup>1</sup> At-sea sales are sales, such as the one subject to this review, which were shipped from a port prior to a sale having been made.

sale price given the significant price fluctuations during the POR. Nevertheless, EuroChem claims, it made numerous sales at equivalent or similar prices in other export markets, including the sale in Italy at a nearly identical price.

EuroChem also contends that, when adjustments are made for differences in terms of sale, the price of its U.S. sale is similar to other export sales. EuroChem claims that a fair comparison can only be made between the U.S. sales price minus certain freight amounts to the prices of other export sales made on an “FOB Baltic Sea” basis. According to EuroChem, such a comparison demonstrates that the U.S. sales price was actually below the market price and, thus, was not atypically high as the petitioner argues.

With respect to quantity, EuroChem asserts that the petitioner’s argument distinguishing at-sea sales from other sales should be rejected because EuroChem’s sales quantity was especially reasonable given the significant antidumping duty cash deposits required upon importation. In addition, EuroChem argues that there is no necessary correlation between at-sea sales and shipment quantities nor has the petitioner articulated any reason for such a relationship.

Finally, EuroChem disagrees with the petitioner’s assertion that other record evidence indicates that the sale was not *bona fide*. EuroChem contends that the Department was aware of the issues raised by the petitioner and that it examined these issues at verification. For all of the reasons given above, EuroChem argues, the Department should continue to find that the U.S. sale was a *bona-fide* transaction.

Department’s Position: We continue to find that the U.S. sale subject to this review is a *bona fide* transaction. The record evidence demonstrates that the U.S. sales price is not substantially different from the prices of EuroChem’s other export sales, that the U.S. sales quantity is not unusual, and that there are no other circumstances which would warrant a finding that the U.S. sale was not a *bona-fide* transaction.

To determine whether a sale in a new-shipper review is “unrepresentative or extremely distortive” and, therefore, excludable as non-*bona fide*, the Department employs a totality-of-the-circumstances test. See Glycine From The People’s Republic of China: Rescission of Antidumping Duty New Shipper Review of Hebei New Donghua Amino Acid Co., Ltd., 69 FR 47405, 47406 (August 5, 2004). In examining the totality of the circumstances, the Department examines whether the transaction is “commercially reasonable” or “atypical.” See Freshwater Crawfish Tail Meat from the People’s Republic of China: Notice of Final Results of Antidumping Duty New Shipper Review, and Final Rescission of Antidumping Duty New Shipper Review, 68 FR 1439, 1440 (January 10, 2003) (Crawfish from the PRC). Atypical or non-typical in this context means unrepresentative of a normal business practice. See Am. Silicon Techs. v. United States, 110 F. Supp. 2d 992, 995 (CIT 2000) (Silicon Techs).

In evaluating whether a sale is *bona fide*, the Department considers, *inter alia*, such factors as (1) the timing of the sale, (2) the price and quantity, (3) the expenses arising from the transaction, (4) whether the goods were resold at a profit, and (5) whether the transaction was made on an arm’s-length basis. See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States, 366 F. Supp. 2d 1246, 1249 (CIT 2005) (citing Silicon Techs., 110 F. Supp. 2d at 995). Therefore, the Department considers a number of factors in its *bona-fides* analysis, “all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.” See Hebei New Donghua Amino Acid Co., Ltd. v. United States, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (New Donghua), citing Fresh Garlic from the People’s Republic of China: Final Results

of Antidumping Administrative Review and Rescission of New Shipper Review, 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum: New Shipper Review of Clipper Manufacturing Ltd.

In our original analysis, we considered the price of the U.S. sale, the quantity of the U.S. sale, and other circumstances surrounding the sale and concluded that EuroChem's sale was a *bona-fide* transaction. See Memorandum from Thomas Schauer to the File entitled "New-Shipper Review of Solid Urea from Russia - Analysis of EuroChem's *Bona Fides* As A New Shipper" dated December 17, 2007 (*Bona-Fides* Memorandum).

In conducting our analysis we observed that the U.S. sales price was higher than the price of most of EuroChem's export sales. See *Bona-Fides* Memorandum at 4. We found, however, that "there were other third-country sales that had prices which were close to that of the U.S. sale," including a sale "which differs by less than one dollar from the price of the U.S. sale." *Id.* As a result, we concluded that "the per-MT price of the U.S. sale is not so different from EuroChem's other exports of urea such that we would find the sale not to be *bona fide*." *Id.*

The question as to whether a sales price is commercially reasonable or representative of normal business practices is not decided, in and of itself, by the degree to which it deviates from the average. While that can be a factor, in this case the presence of other export sales with similar prices indicates that, although the price of EuroChem's U.S. sale was higher than average, it was not so different from other export prices that we could conclude that it was not commercially reasonable or unrepresentative of EuroChem's normal business practices. As a result, we do not find that the price of EuroChem's U.S. sale is atypical such that we would conclude that the U.S. sale is not a *bona-fide* transaction.

In addition, we agree with EuroChem that other evidence on the record that we had not considered in the *Bona-Fides* Memorandum supports our conclusion that its U.S. sales price is commercially reasonable. For example, the Fertecon Nitrogen report dated November 30, 2006, which EuroChem submitted in its July 11, 2007, supplemental response, indicates that the price of EuroChem's U.S. sale is very similar to the prices for urea on November 30, 2006, shortly before the date of the U.S. sale. See EuroChem's July 11, 2007, supplemental response at page SQRA-1566 of Exhibit 52 and at page SQRA-287 of Exhibit 15.

With respect to quantity, as we stated in the *Bona-Fides* Memorandum, we observed a significant number of "exports of solid urea to third countries had quantities that were lower than the quantity of the U.S. shipment" and found that "the quantity of the U.S. sale is not unusual with respect to EuroChem's other exports of urea." See *Bona-Fides* Memorandum at 2-3. The petitioner argues that the U.S. sales quantity is small relative to other at-sea sales we examined at verification. We are aware of no justification, however, for limiting our analysis to at-sea sales in order to measure whether EuroChem's U.S. sale was made in a quantity that is commercially reasonable or representative of EuroChem's normal business practices, as the record does not support a correlation between quantity and location of sale. Indeed, as most of EuroChem's sales were not made on an at-sea basis, limiting our analysis as petitioners suggest could lead to unrepresentative results. As such, we find that all EuroChem's third-country sales of comparable merchandise are a reasonable basis upon which to compare EuroChem's U.S. sale to determine whether it was made at an unusual quantity. The results of such a comparison demonstrate that EuroChem's U.S. sale was not made at an unusually low quantity.

Finally, we do not find that there is insufficient record evidence to support a finding that

EuroChem's U.S. sale was consistent with its normal business practices. Although most of EuroChem's sales were not at-sea sales, we found at verification that at-sea sales of solid urea and other products was not an unusual occurrence during the POR. See Sales Verification Report dated November 13, 2007, at page 4. With respect to the other concerns the petitioner has raised (*e.g.*, whether the circumstances of the mixed shipment of subject and non-subject merchandise were a typical practice for EuroChem's export shipments), the petitioner has not articulated a basis upon which to conclude that such circumstances would render EuroChem's U.S. sale unrepresentative or distortive.

In conclusion, we find that the record evidence demonstrates that EuroChem's U.S. sale is a *bona-fide* transaction. Accordingly, we find such sale a proper basis upon which to conduct this new-shipper review.



Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of the new-shipper review and the final dumping margin for EuroChem in the Federal Register.

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

\_\_\_\_\_  
David M. Spooner  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date